



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, MNDCT, OLC

Introduction

The Tenant seeks an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to section 46(4)(b) of the *Residential Tenancy Act* (the “Act”). They are also seeking compensation for monetary loss or other money owed pursuant to section 67 of the Act and for the Landlord to comply with the Act, *Residential Tenancy Regulation* or the tenancy agreement under section 62 of the Act.

Parties appeared for both the Landlord and the Tenant. The parties affirmed to tell the truth during the hearing. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

The Tenant testified they served the Notice of Dispute Resolution Package (the “Materials”) on the Landlord by attaching them to the door of the Landlord’s residence. The Landlord confirmed receipt of the Materials and raised no issues with service. Though attaching Materials to the door of the Landlord’s residence is not a method provided for in section 89 of the Act, as the Landlord confirmed receipt of the Materials and raised no issues, I find that pursuant to section 71(2)(c) of the Act that Tenant’s Materials were sufficiently served to the Landlord.

The Landlord stated that they served their evidence to the Tenant by attaching to the door of the rental unit. The Tenant confirmed receipt and raised no issues with service. Therefore, I find that the Landlord’s evidence was sufficiently served to the Landlord.

Preliminary Issue: Severing

The Tenant applied for multiple remedies under the Act, some of which were not sufficiently related to one another.

Rule 2.3 of the *Rules of Procedure* states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After reviewing the issues raised by the Tenant, I determined that the primary issue is the Tenant's request to cancel the Notice and I exercised my discretion to dismiss with leave to re-apply, all claims other than the one related to the Notice.

Issues to be Decided

- 1) Should the Notice be cancelled?
- 2) If not, is the Landlord entitled to an Order of Possession?
- 3) Is the Landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

Both parties agreed that the tenancy started on May 20, 2021, that rent is \$1,200.00 per month and that the Tenant remains in the rental unit.

The Tenant stated that rent is due on the first day of the month but the Landlord stated rent is due on the 25th day of each month. The Tenant confirmed a five-year written agreement was entered in to which stated that rent was payable on the first day of the month but then a second agreement for a ten-year term had been signed which provided that rent way payable on the 25th day of each month.

Copies of the two tenancy agreements were submitted into evidence by the Tenant. Both are non-standard, handwritten agreements. The five-year agreement does not provide a day of the month where rent is due. The ten-year agreement states rent is due on the 25th day of the month. Based on the above, I find that rent is due on the 25th day of the month. As the agreement does not specify whether rent is payable in advance or in arrears I can make no findings in this regard.

The Tenant stated a security deposit of \$700.00 and a pet damage deposit of \$325.00 were paid at the start of the tenancy. The Landlord states neither were paid.

The Landlord testified rent for the month of October 2022 had not been paid, nor had rent for November 2022. A partial payment of \$540.00 was made for December 2022 but no payments were made for January 2023, February 2023 or March 2023.

The Notice was served on February 28, 2023 at 11:45 A.M. by attaching to the door of the rental unit. A copy of the Notice was submitted into evidence by the Tenant and states that an amount of \$6,600.00 is due in unpaid rent as of March 1, 2023. It is signed February 28, 2023 and provides an effective date of March 10, 2023.

The Landlord stated \$7,860.00 was now owed by the Tenant in unpaid rent.

The Tenant testified that rent for October 2022 was paid in full and directed my attention to a rent receipt submitted into evidence. The receipt is signed by the Landlord and states "October/22 rent paid in full from [Tenant's name] at [rental unit address]". They stated rent for November 2022 was partially paid in the amount of \$690.00 as they were paid for snow and ice removal.

The Tenant stated that they tried to pay rent for December 2022 but the Landlord did not accept it. They were offering to provide rent, which is paid in cash, via text message. They stated they tried to pay rent for January, February and March also but as the Landlord wanted more money, they did not accept it.

The Landlord stated they did not agree to deductions for snow removal and that the Tenant did not try to pay rent. They then stated the Tenant had offered to pay rent for January 2023 and February 2023 via text. The Landlord then stated he knew the Tenant had no cash to pay rent.

The Landlord stated they tried to collect rent for January 2023, February 2023 and March 2023 and referred me to screenshots of text messages they submitted into evidence. The most recent message referencing rent is from December 8, 2022.

Analysis

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some, or all, of the rent.

Section 46(1) of the Act allows landlords to end a tenancy if the tenant does not pay rent on time by issuing a 10 Day Notice to End Tenancy for Unpaid Rent.

Based on the testimony and evidence from both parties I find that there are defects present in the Notice.

The Tenant's testimony and documentary evidence shows that rent for October 2022 was paid in full. Therefore, the Notice should not include this amount in unpaid rent.

The Landlord's testimony confirmed the Tenant had offered to pay rent for January 2023 and February 2023 but that it was not accepted.

The Notice is signed February 28, 2023 but includes rent due on a future date, namely March 1, 2023.

Finally, the Landlord testified that rent is due on the 25th day of the month and this is reflected in the ten-year written agreement, however the Notice provides for an amount due on the first day of the month.

For the above reasons I find that the Notice is not valid. Therefore, I find that the Tenant is entitled to an order canceling the Notice to End Tenancy for Unpaid Rent dated February 28, 2023. The tenancy continues.

Conclusion

The Application is granted and the tenancy continues.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: April 11, 2023

Residential Tenancy Branch